



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1138 (CAFC Remand Proceeding)]

Certain LTE- and 3G-Compliant Cellular Communications Devices; Notice of a Commission Determination to Dismiss as Moot a Portion of the Complaint; Termination of Remand Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on October 24, 2022, the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) issued a mandate with instructions to dismiss as moot the portion of the complaint filed in the above-captioned investigation relating to U.S. Patent No. 6,760,590 (“the ’590 patent”), which expired during the pendency of an appeal before the Court. The Commission hereby dismisses that portion of the complaint. The remand proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 19, 2018, based on a complaint filed by INVT SPE LLC (“INVT”) of San Francisco, California. 83 FR 53105 (Oct. 19, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of

certain LTE- and 3G-compliant cellular communications devices by reason of infringement of certain claims of five U.S. patents, including U.S. Patent Nos. 6,760,590; 7,206,587 (“the ’587 patent”); and 7,848,439 (“the ’439 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Apple Inc. of Cupertino, California; HTC Corporation of Taoyuan City, Taiwan; HTC America, Inc. of Seattle, Washington; ZTE Corporation of Guangdong, China; and ZTE (USA) Inc. of Richardson, Texas. *Id.* at 53106. The Office of Unfair Import Investigations was also named as a party. *Id.*

On June 1, 2020, the Commission terminated the investigation with a finding of no violation of section 337 as to certain claims of the ’590, ’587, and ’439 patents. 85 FR 34649-50 (June 5, 2020). INVT filed an appeal with the Federal Circuit with respect to certain issues in the Commission’s final determination with respect to the ’590 patent, including claim construction, infringement, and the technical prong of the domestic industry requirement.

The ’590 patent expired on March 5, 2022, during the pendency of the appeal before the Federal Circuit. On August 31, 2022, in a precedential opinion, the Federal Circuit held that INVT’s appeal as to the ’590 patent had become moot. *INVT SPE LLC v. ITC*, 46 F.4th 1361, 1370 (Fed. Cir. 2022) (“The expiration of the ’590 patent, therefore, has rendered this appeal moot with respect to that patent.”). The Court vacated the Commission’s determination as to the ’590 patent, and “remand[ed] with instructions to dismiss as moot the relevant portion of the complaint.” *Id.*; *see also id.* at 1365, 1381. On October 24, 2022, the Federal Circuit issued its mandate returning jurisdiction of the matter to the Commission.

In accordance with the Court’s remand instructions, the Commission has determined to dismiss as moot the portion of INVT’s complaint relating to the ’590 patent. In addition, we observe that the Federal Circuit’s vacatur of the Commission’s final determination and the dismissal of the complaint pursuant to the Court’s remand order as to the ’590 patent sets aside all ALJ findings and Commission findings related to that patent.

The remand proceeding is hereby terminated.

The Commission vote for this determination took place on March 3, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 6, 2023.

Lisa Barton,
Secretary to the Commission.

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